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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

LOUISIANA LEGISLATIVE BLACK CAUCUS,
CONGRESSMAN CLEO FIELDS,
BERNADINE ST. CYR, PATRICK FONTENOT,
HAZEL FREEMAN AND RALPH WILSON, APPELLANTS,

v.

RAY HAYS, ET AL., APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

ROBERT B. MCDUFF
771 North Congress Street
Jackson, MS 39202
(601) 969-0802

BARBARA R. ARNWINE
THOMAS J. HENDERSON
*BRENDA WRIGHT
TODD A. COX
LAWYERS' COMMITTEE
FOR CIVIL RIGHTS
UNDER LAW
1450 G Street, N.W.
Washington, D.C. 20005
(202) 662-8600

Counsel for Louisiana Legislative Black Caucus

(Additional Counsel listed on Inside Cover)

(Listing of Counsel continued from Outside Cover)

A. LEON HIGGINBOTHAM, JR.
GREGORY A. CLARICK
DEBO ADEGBILE
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

FRANCIS GOWEN, JR.
222 Florida Street
Shreveport, LA 71105
(318) 797-6933

ERNEST JOHNSON
12124 Sullivan Road
Baton Rouge, LA 70807
(504) 261-6469

Counsel for Congressman Cleo Fields

ELAINE R. JONES
Director-Counsel

THEODORE M. SHAW
NORMAN J. CHACHKIN
JACQUELINE A. BERRIEN
VICTOR BOLDEN
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
99 Hudson Street
New York, NY 10013
(212) 219-1900

WILLIAM P. QUIGLEY
Loyola University Law
School
7214 St. Charles Avenue
Box 902
New Orleans, LA 70118
(504) 861-5590

Counsel for Bernadine St. Cyr, Patrick Fontenot, Hazel Freeman, & Ralph Wilson

*Counsel of Record

QUESTIONS PRESENTED

1. Did the district court err in holding that a state's historical district configurations are irrelevant to the constitutionality of a similarly configured black-majority congressional district, because the state's previous districting plans had not been challenged in litigation and upheld by a federal court?

2. Did the district court err in holding that Louisiana's desire to comply with the Voting Rights Act is proof of an improper racial purpose that requires strict scrutiny of the state's redistricting plan?

3. Did the district court err in ruling that Louisiana has no compelling interest justifying the creation of a majority-black district closely modeled on past majority-white congressional districts, when the state's history of racial discrimination and racially polarized voting has prevented the election of any black person to the state legislature, to Congress, or to a statewide office in Louisiana during this century, except in districts with a majority of black registered voters?

4. Did the district court err in ruling that Louisiana's redistricting plan, drawn in response to this Court's decision in *Shaw v. Reno*, 113 S. Ct. 2816 (1993), is not narrowly tailored, when the challenged majority-black district has only a 54% black voting-age population, resembles white-majority districts previously drawn by the state, and has caused no injury to any plaintiff?

5. Did the district court exceed its authority in imposing a permanent remedial plan that departs from state policy and does not meet the requirements of the Voting Rights Act?

6. Did the district court err in ruling that the plaintiffs suffered sufficient harm to confer standing to sue?

PARTIES

Actual parties to the proceeding in the United States District Court were:

(1) Ray Hays, Edward L. Adams, Susan Shaw Singleton, Gary Stokely, Patricia Slocum, Richard David, Barbara David, Terry Gillespie, Floyd Gonzalez, Richard Sanders, Parks Sansing, Bobby Williams, plaintiffs, appellees herein

(2) State of Louisiana, defendant, appellant herein

(3) Edwin W. Edwards, in his official capacity as Governor of the State of Louisiana, defendant

(4) Samuel B. Nunez, Jr., in his official capacity as Speaker of the Louisiana House of Representatives, defendant

(5) John A. Alario, in his official capacity as Speaker of the Louisiana House of Representatives, defendant

(6) W. Fox McKeithen, in his official capacity as Secretary of State for the State of Louisiana, defendant

(7) Jerry Fowler, in his official capacity as Commissioner of Elections for the State of Louisiana, defendant

(8) The United States of America, defendant-intervenor, appellant herein

(9) The Louisiana Legislative Black Caucus, defendant-intervenor, appellant herein

(10) Congressman Cleo Fields, defendant-intervenor, appellant herein

(11) Bernardine St. Cyr, Hazel J. Freeman, Patrick Fontenot, Ralph Wilson, defendant-intervenors, appellants herein

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The January 5, 1996 opinion of the three-judge district court has not yet been reported and appears in the Appendix to the Jurisdictional Statement on Behalf of the State of Louisiana ("La. J.S. App.") at La. J.S. App. 1. The district court's order and final judgment, also entered January 5, 1996, is unreported and appears at La. J.S. App. 39. Previous decisions of the district court at earlier phases of this litigation are reported at 839 F. Supp. 1188 (W.D. La. 1993) (*"Hays I"*), *vacated,* 114 S. Ct. 2731 (1994), and 862 F. Supp. 119 (W.D. La. 1994) (*"Hays II"*), *vacated*, 115 S. Ct. 2431 (1995), and appear, respectively, at La. J.S. App. 105 and La. J.S. App. 63.

JURISDICTION

The judgment of the court below was entered January 5, 1996. The Louisiana Legislative Black Caucus filed its notice of appeal to this Court on February 9, 1996 (App. 1a), Congressman Fields filed his notice of appeal on

February 14, 1996 (App. 6a), and Bernadine St. Cyr, Patrick Fontenot, Hazel Freeman, and Ralph Wilson filed their notice of appeal on February 16, 1996 (App. 10a). On April 1, 1996, Justice Scalia granted the Louisiana Legislative Black Caucus and Congressman Fields an extension of time to and including April 16, 1996, within which to docket the appeal, and this appeal is being docketed within the time provided by that extension. The jurisdiction of this Court is invoked under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment provides, in pertinent part, that "[N]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws," and is reproduced at La. J.S. App. 181. Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. §§ 1973, 1973c, are reproduced at La. J.S. App. 182-84.

STATEMENT OF THE CASE

A. Background to Adoption of Act 1

This case is a challenge to the second post-1990 congressional plan enacted by the State of Louisiana. The 1990 census resulted in Louisiana losing one of its eight congressional seats. In May 1992, the Legislature enacted Act 42, a new congressional plan with seven congressional districts. The plan included two majority African-American districts. After obtaining the necessary preclearance of the plan under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, the State implemented the plan in the 1992 congressional elections. A map of that plan is reproduced at La. J.S. App. 158.

On July 22, 1992, four registered voters in Louisiana, respondents here, challenged the plan before the United States District Court for the Western District of Louisiana, alleging that the plan violated their rights under, *inter alia*,

the Equal Protection Clause of the Fourteenth Amendment. While these claims were pending, this Court decided *Shaw v. Reno*, 113 S. Ct. 2816 (1993). On December 28, 1993, the three-judge district court issued an opinion and order holding that Act 42 violated the Equal Protection Clause. *Hays I*, La. J.S. App. 105. The court ruled that strict scrutiny of Act 42 was required based on District 4's "highly irregular" shape and the fact that the district was intentionally drawn to include a 63% black voting age population. La. J.S. App. at 129, 142-43. The court further held that Act 42, even if it were supported by a compelling state interest, was unconstitutional because it was not narrowly tailored. The court found that District 4 in Act 42 "pack[ed]" more black voters into the district than was "reasonably necessary to give blacks a realistic chance to determine the outcome of elections there," and that "a second majority black district could have been drawn that would have done substantially less violence to traditional redistricting principles." La. J.S. App. at 150, 153. The State of Louisiana appealed the decision to this Court.

While the State's appeal was pending, the Legislature decided to redraw its congressional districts in response to the district court's decision striking down Act 42. At the request of senators on the reapportionment committee, the State's demographer, Glenn Koepp, began by reviewing Louisiana's prior congressional districts during the 1970's and 1980's, to see if previous versions of Louisiana's 8th Congressional District could be employed as the basis for a new District 4. La. Ex. 1 (1994), 4/18/94 Senate Comm. Tr. 14; Bagneris Test., 7/21/94 p.m., Tr. 105, 117; Koepp Test., 7/21/94 a.m., Tr. 13. For 25 years (1967-1992), Louisiana drew its 8th Congressional District in a rough diagonal that followed parishes along the Red River Valley extending from the northwest and central parts of the State to areas along the Mississippi River, ending south of Baton Rouge. These areas have substantial concentrations of black citizens;

indeed, as of 1990 the old 8th Congressional District had a 38% black population. Engstrom Report, State Ex. 13 (1994), at 4. One version of the old 8th District stretched from the Texas border in the northwest down to Lake Pontchartrain (near New Orleans) in the southeast. La. J.S. App. 196. Maps of Louisiana's congressional districts from 1967-1992 are reproduced at La. J.S. App. 195-98.

Koepp was instructed to determine whether, using the previous plans as a model, a plan including two majority-black districts could be created that could obtain a consensus in the Legislature while avoiding the deficiencies that the district court had found in Act 42. Koepp Test., 7/21/94 a.m., Tr. 5-8, 13; Brinkhaus Test., 7/22/94 a.m. Tr. 9-11. Koepp believed that if a "bizarre" configuration were required in order to draw a second majority-black district, he should not propose such a plan because "the legislature would not have adopted it." Koepp Test., 7/21/94 a.m., Tr. 33-34. As Koepp explained: "It wasn't just that you had to do it [i.e., draw two majority-black districts], you either had to show that you can do it and meet this Court's requirements . . . and have a second minority district or you couldn't do that." *Id.*

Koepp was able to succeed. New District 4, as drawn in Act 1, includes a black voting-age population of 54%, State Ex. 13, and, like the old 8th District, is centered on a Red River-Mississippi River axis. *See* Map of Act 1, La. J.S. App. 194. Louisiana legislators expressly discussed, during the 1994 Special Session on redistricting, the resemblance between the old 8th District and proposed District 4, examining maps of Louisiana's prior congressional plans for purposes of comparison. La. Ex. 1 (1994), 4/18/94 Senate Committee Hearing Tr. 235-257; Greene Test., 10/30/95 Tr. 50. As Speaker *Pro Tem* Sherman Copelin explained during hearings before the House & Governmental Affairs Committee ("House Committee"), District 4 under Act 1 "is basically the same district that Gillis Long had for years[.]"

4/18/94 House Committee Hearing Tr. 46.[1] Act 1 maintains 50 of Louisiana's 64 parishes as whole parishes, splitting 14.[2]

In adopting Act 1, the Legislature recognized that voting is highly racially polarized in Louisiana. Although the state has a black population of 30.6%, in this century no black candidate has ever been elected to statewide office in Louisiana, and no black candidate has ever been elected either to Congress or to the state legislature from any district with a white registered voter majority. As the 1992 proceedings in this case established, even with a 38% black population in the old 8th District during the 1980s, black voters exercised no meaningful influence over the outcome of elections, and their representative was unresponsive to the interests of black voters. Engstrom Test., 8/27/92, Tr. 358-59. Legislators expressly considered the need to remedy this racial discrimination and comply with Sections 2 and 5 of the Voting Rights Act, as confirmed by the transcripts of the committee hearings held during the special session as well as the testimony at trial.[3]

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[1] *See also* 4/18/94 House Committee Hearing Tr. 55-56 (remarks of Representative Reilly); Def. Ex. 18 (1994), Declaration of Representative Raymond Jetson, ¶ 7; Bagneris Test., 7/21/94 p.m. Tr. 117-18.

[2] The congressional plan in effect in Louisiana during the 1980s split 7 parishes, while the districts in Louisiana's 1992 plan, Act 42, split 28 parishes.

[3] *E.g.*, 4/18/94 House Committee Hearing, Tr. 62-64, remarks of Sen. Bajoie ("No African-American was elected to Congress from Louisiana in this century until 1990, after the first majority African-American district was created"); Senate Committee Hearing, Tr. 72, remarks of Sen. Guidry ("I think that the Voting Rights Act and the Constitution require[] that each individual have an opportunity to participate in the electoral process and have an opportunity to elect a person of their choice"); *id.* at Tr.

In sum, in creating the plan that became Act 1, the State sought to balance "[c]ompactness, contiguity, the political boundaries, the geographic boundaries, the . . . community interest, . . . party consideration[s] such as incumbency", as well as the Voting Rights Act. Bagneris Test., 7/21/94 p.m., Tr. 120. According to Glenn Koepp, "What we were doing was attempting to meet *all* of the criteria." Koepp Test., 7/21/94 a.m., Tr. 33 (emphasis added).

B. Legal Proceedings Following Adoption of Act 1

Following Louisiana's enactment of the new redistricting plan in Act 1, this Court on June 27, 1994, granted the State's motion to vacate the December 28, 1993 decision of the three-judge court, and remanded the case to the three-judge court for further proceedings in light of Act 1. *Louisiana v. Hays*, 114 S. Ct. 2731 (1994). On July 6, 1994, the three-judge court granted leave to the original *Hays* plaintiffs (Ray Hays, Gary Stokley, Edward Adams, and Susan Shaw Singleton) (hereafter, the "*Hays*" plaintiffs) to amend their complaint to challenge the constitutionality of Act 1. The United States intervened to defend the constitutionality of Act 1.

None of the *Hays* plaintiffs resided in the new 4th Congressional District created by Act 1. The district court denied motions for leave to intervene filed by residents of District 4 (Bernadine St. Cyr, Patrick Fontenot, Hazel

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263, remarks of Glenn Koepp (proposed plan is "narrowly tailored and "gives minorities a[n] opportunity to elect a candidate of their choice. It gives them access to the political process"). *See also* Brinkhaus Test., 7/22/94 a.m., Tr. 22-23, 34 (testifying that he considered need to remedy effects of past discrimination and that "[i]t's 55 percent registered voters what it is to make it effective, so it's [a] level playing field."); Koepp Test., 7/21/94 a.m., Tr. 20-23; Declaration of Rep. Joseph Accardo, Jr., State's Ex. 16 (1994); Bagneris Test., 7/21/94 p.m., Tr. 107.

Freeman, and Ralph Wilson) and the Louisiana Legislative Black Caucus.

The district court set the case down for trial on the merits to begin on July 21, 1994, two weeks after the amendment of the complaint. At the conclusion of the one-and-a-half-day trial, after a 15-minute recess, the court announced its decision striking down Act 1 on July 22, 1994. The court entered judgment on July 25, 1994, and ordered into effect its own redistricting plan. In an opinion filed July 29, 1994, the court ruled that District 4 was subject to strict scrutiny under *Shaw* because it was drawn with the "specific intent" to create a majority-black district. *Hays II*, La. J.S. App. 66. The district court further ruled that Louisiana had no compelling interest in drawing a second majority-black congressional district, either to overcome past racial discrimination and the effects of racially polarized voting, or to comply with the Voting Rights Act. La. J.S. App. 68-71.

The State and the United States appealed. On August 11, 1994, this Court stayed the district court's judgment, 115 S. Ct. 31 (1994), and subsequently noted probable jurisdiction. 115 S. Ct. 687 (1994). On June 29, 1995, this Court vacated the district court's judgment and directed the district court to dismiss the complaint, holding that the *Hays* plaintiffs lacked standing to challenge the constitutionality of District 4 because they did not reside in the district and had suffered no cognizable injury. *United States v. Hays*, 115 S. Ct. 2431 (1995).

Notwithstanding this Court's ruling on standing, the district court, on remand, granted the *Hays* plaintiffs leave to amend their complaint again, holding that these non-residents of District 4 could remain as plaintiffs while adding several residents of District 4 as new plaintiffs. Order, July 31, 1995. The new plaintiffs were Patricia Slocum, who ran unsuccessfully as a Republican candidate in District 4 in 1994, and a number of her supporters (hereafter, the

"*Slocum* plaintiffs"). The district court also granted motions by the Louisiana Legislative Black Caucus, Congressman Cleo Fields (who represents District 4), and District 4 voters Bernadine St. Cyr, Patrick Fontenot, Hazel Freeman, and Ralph Wilson, for leave to intervene as defendants. Order, August 9, 1995. The court set trial for October 30-31, 1995.

On January 5, 1996, the district court issued its decision, again striking down District 4, imposing a court-drawn plan for use in all future congressional elections (the same plan it attempted to impose in 1994), and ordering the State of Louisiana to obtain advance approval from the district court if it wishes to implement a different redistricting plan. La. J.S. App. 1-40. Citing *Miller v. Johnson*, 115 S. Ct. 2475 (1995), the district court stated that race was the Legislature's predominant motive in creating Act 1 and that the Legislature disregarded traditional redistricting principles in drawing District 4. La. J.S. App. 13-14. The court stated that District 4 is the longest district drawn by the state and that the district includes "numerous and diverse cultures, each with its unique identity, history, economy [and] religious preference." La. J.S. App. 14. The court also cited the parishes and municipalities split by District 4, noting that the split portions of the parishes and municipalities included in District 4 had larger proportions of black voters than the portions outside of District 4. La. J.S. App. 14. The court further found that the State's demographer, Glenn Koepp, "admit[ted]" that he "concentrated virtually exclusively on racial demographics and considered essentially no other factor" except one-person, one-vote requirements. La. J.S. App. 15.[4]

The district court termed "spurious" the Legislature's reliance on the resemblance between the old 8th District and

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[4] The district court's opinion contains no citations to the trial transcript or any of the exhibits introduced in the case.

District 4 in Act 1. La. J.S. App. 16. The court held that the old 8th could not be a proper model for the State's redistricting efforts because the old 8th was "never challenged on constitutional grounds." La. J.S. App. 17 n.48. The court also stated that Mr. Koepp had "concede[d]" that "the Old Eighth itself was used as a guise for amassing a large percentage of minority voters into one district, not as a means of following traditional district boundaries." La. J.S. App. 17. The court rejected as "post-hoc rationalizations" the evidence that District 4 follows the Red River and includes persons with common interests. La. J.S. App. 16.

Based primarily on its finding that District 4 is noncompact, the court further ruled that the State had no compelling interest in drawing a second majority-black district, either to comply with the Voting Rights Act or to remedy the state's past voting discrimination, and that District 4 was not narrowly tailored. La. J.S. App. 17-21.

Without providing the Legislature an opportunity to draw a remedial plan, or holding proceedings on remedy, the court enjoined further elections under Act 1 and re-imposed the same plan it had drawn in 1994. The district court explained that Louisiana should not be entrusted with the authority to redraw its congressional districts because the State had "continued its vigorous legal defense" of Act 1 after the district court had entered its judgment striking down Act 1 in 1994. La. J.S. App. 22.[5]

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[5] The district court also stated that it adopted by reference all findings of fact and conclusions of law from its opinions in *Hays I* and *Hays II*, except to the extent that they were "inconsistent with subsequent Supreme Court precedent" or otherwise superseded by later events. La. J.S. App. 4-5 nn. 10, 16. However, the court did not identify which of its findings or conclusions it considered to fall into these categories.

The district court denied motions by the appellants for a stay pending appeal. La. J.S. App. 54, 46. All appellants have filed applications with this Court for a stay pending appeal, and those applications remain pending.

REASONS FOR NOTING PROBABLE JURISDICTION

This is the first redistricting case brought to this Court that presents the question of the constitutionality of a redistricting plan that a state legislature already has redrawn for the specific purpose of complying with the principles established in *Shaw v. Reno*, 113 S. Ct. 2816 (1993).[6] In striking down Louisiana's balanced, reasonable, narrowly tailored redistricting plan, the district court substantially misconstrued this Court's precedents and imposed its own subjective redistricting preferences as the measure of Act 1's constitutionality. The district court refused to measure the 4th Congressional District by the yardstick of Louisiana's own past redistricting plans, contrary to this Court's ruling in *Miller v. Johnson*, 115 S. Ct. 2475 (1995). The district court further erred in holding that Louisiana's desire to comply with the Voting Rights Act was itself proof of a racial purpose requiring strict scrutiny, a ruling that would render presumptively unconstitutional

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[6] This Court in 1994 stayed the judgment of the court below striking down Act 1, and subsequently noted probable jurisdiction. *Louisiana v. Hays*, 115 S. Ct. 31 (1994) (order granting stay); *Louisiana v. Hays*, 115 S. Ct. 687 (1994) (order noting probable jurisdiction). The congressional plan at issue in this appeal is the same plan, Act 1, which was the subject of the 1994 appeal. Although plaintiffs now include several residents of District 4 who joined the complaint in July 1995, the district court's reasoning in striking down Act 1 is the same reasoning it used in its 1994 judgment, and the substantive issues raised by this appeal are identical to those raised in 1994 when this Court issued a stay and noted probable jurisdiction.

virtually every majority-minority district drawn by a state legislature after the 1990 Census.

The district court's decision, if upheld, would also reduce to an empty slogan this Court's holding in *Miller* that "there is a significant state interest in eradicating the effects of past discrimination." *Id.* at 2490. If the record of racial discrimination and racially polarized voting in Louisiana is insufficient to provide a compelling interest supporting the adoption of Act 1, it is doubtful that there is any jurisdiction in the United States where a race-conscious redistricting plan could survive review once a court determines that strict scrutiny is required under *Miller*. The breadth of the district court's rule is especially apparent considering that Louisiana, in crafting District 4, enacted the most narrowly tailored majority-black district that could have been created -- a district more compact than those offered by the plaintiffs as examples of narrow tailoring during the 1993 trial of *Hays I*.

By denying a state with Louisiana's record of racial discrimination the authority to draw even the most narrowly tailored majority-black district, the district court's ruling leaves no room for voluntary remedial efforts by the states. The decision of the court below thus conflicts with decisions of other three-judge district courts that have upheld majority-minority election districts drawn to overcome the legacy of racial discrimination and assure compliance with the Voting Rights Act, even if the resulting redistricting plans may depart from a court's conception of ideal compactness.[7]

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[7] *King v. State Board of Elections*, 1996 WL 130439 (N.D. Ill. March 11, 1996)(three-judge court) (compliance with Section 2 of Voting Rights Act provided compelling justification for majority-Hispanic district, despite irregular shape of district); *Vera v. Richards*, 861 F. Supp. 1304, 1316, 1325-26, 1343-44 (S.D. Tex. 1994) (three-judge court) (striking down certain "bizarre[ly]"

The district court also exceeded its authority in imposing a remedial plan that conflicts with valid state policy choices, guarantees that black citizens will have no opportunity to elect a candidate of their choice in six of the state's seven congressional districts, and violates Section 2 of the Voting Rights Act, 42 U.S.C. §1973.

I. THE DISTRICT COURT MISAPPLIED THE HOLDING OF *MILLER V. JOHNSON* IN SUBJECTING ACT 1 TO STRICT SCRUTINY DESPITE THE LEGISLATURE'S RELIANCE ON ITS CUSTOMARY REDISTRICTING PRACTICES.

To subject a congressional district to strict scrutiny, a plaintiff must establish that race was the "predominant" and "overriding" factor in creating the district, *Miller v. Johnson*, 115 S. Ct. 2475, 2488-89 (1995), by proving that the state "subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id.* at 2488. As Justice O'Connor observed in *Miller*, "the threshold standard the Court adopts . . . [is] a demanding one," *id.* at 2497, requiring strict scrutiny of a race-conscious

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shaped majority-minority districts in Dallas and Houston that could have been drawn in more compact manner, but upholding 250-mile long district which split city and county lines in creating "safe" majority-Hispanic district to comply with Voting Rights Act), *prob. juris. noted sub nom. Bush v. Vera*, 115 S. Ct. 2639 (June 29, 1995). *See also DeWitt v. Wilson*, 856 F. Supp. 1409, 1414 (E.D. Cal. 1994) (three-judge court) (upholding congressional and state legislative redistricting plans created by California Supreme Court in *Wilson v. Eu*, 823 P.2d 545 (Cal. 1992), where minority districts met goal of "functional compactness," although plan split counties and cities to facilitate creation of minority districts, *id.* at 582, 594), *aff'd in part, appeal dismissed in part*, 115 S. Ct. 2637 (1995).

plan only when a jurisdiction has "relied on race in *substantial disregard* of customary and traditional districting practices." *Id.* (emphasis added). The *Miller* standard is thus limited to "extreme instances of gerrymandering." *Id.*

The district court's first ruling striking down Act 1 in 1994 was premised on its belief that *any* intentional creation of a majority-black congressional district is presumptively unconstitutional and subjects a plan to strict scrutiny. *See Hays II*, La. J.S. App. 67 ("race conscious redistricting, while not always unconstitutional, is always subject to strict scrutiny"). That reasoning conflicts with both *Shaw* and *Miller*.[8] Although the district court has now rephrased its ruling to conform to the language of *Miller*, declaring that the Legislature "subordinated traditional race-neutral districting principles" in adopting Act 1, La. J.S. App. 13, the record and the district court's own analysis show that this ruling remains grounded on a fundamental misapprehension of the legal principles set forth in *Shaw* and *Miller*.

Most importantly, the district court failed to measure the 4th Congressional District by the yardstick of Louisiana's own past redistricting plans. As the district court itself suggested in 1993 in *Hays I*, the Louisiana Legislature was able to draw a "*significantly* more compact" majority-black district after its first redistricting plan was invalidated -- one that comports "*much* more closely" with traditional redistricting principles than the invalidated plan. *Hays I*, La. J.S. App. at 153-54 (emphasis added). Every witness involved in the preparation of Act 1 confirmed that the plan

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[8] *Shaw* "express[ed] no view as to whether the intentional creation of majority-minority districts, without more, always gives rise to an equal protection claim." 113 S. Ct. at 2828. In *Miller v. Johnson*, the Court ruled that race-consciousness in drawing district lines would not alone render a districting plan presumptively unconstitutional. 115 S. Ct. at 2488.

was deliberately modeled on past versions of Louisiana's 8th Congressional District, which for 25 years (1967-1992) was drawn in a rough diagonal that included Red River Valley parishes in the northwest and/or central parts of the State and extended south of Baton Rouge. The new 4th District is configured along the same axis, generally following the Red River and the Mississippi River. The maps of the congressional plans themselves, which the legislators reviewed during the Special Session, confirm that District 4 resembles past majority-white districts in Louisiana.[9]

The district court gave two reasons for dismissing as unimportant the resemblance between District 4 in Act 1 and Louisiana's old 8th District. Neither withstands scrutiny. First, the district court ruled that Louisiana's previous congressional districts on which the 4th District was based should be considered inherently suspect, because "the 'Old Eighth' was never challenged on constitutional grounds." La. J.S. App. 17 n.48.[10] Under this ruling, a state may not rely upon its past redistricting plans unless those plans have themselves previously been challenged in litigation and upheld by a federal court. Such a rule has no

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[9] *See* Senate Committee Hearing Tr. 49, remarks of Glenn Koepp ("a lot of similarities" between old 8th and new 4th); Hilliard Test., 7/21/94 a.m. Tr. 53 ("strong resemblance"); House Committee Hearing Tr. 46, remarks of Rep. Copelin; Bagneris Test., 7/21/94 p.m. Tr. 117-18; State Ex. 16 (1994), Accardo Decl. at 3.

[10] *See also Hays II*, La. J.S. App. 66 (stating that configuration of old 8th Congressional District should be disregarded because old 8th was "certainly bizarre," was enacted "before Shaw," and was "never challenged"); *id.*, La. J.S. App. 78-79 (holding that "the tradition of the past regarding the old eighth district" is not "binding on this Court, due to the fact that the old eighth district was never challenged on constitutionality by any court in the United States.") (Shaw, D.J., joined by Wiener, J., concurring).

basis in *Miller*, and indeed would conflict with the well-established proposition that legislative enactments are deemed lawful unless proven otherwise, *see Voinovich v. Quilter*, 113 S. Ct. 1149, 1156-57 (1993).

Second, the district court stated that the Legislature's effort to model a district on the old 8th District was itself improper because the old 8th District had a large concentration of black citizens, therefore proving that Act 1 was unconstitutionally race-based. La. J.S. App. 16. This reasoning ignores the careful distinction drawn in *Miller* between mere race-conscious redistricting (which is not in itself necessarily suspect) and race-conscious redistricting that disregards the state's own "customary and traditional redistricting practices" (which is). *Miller*, 115 S. Ct. at 1497 (O'Connor, J., concurring). Nothing in *Miller* disqualifies a state from using, as building blocks in redistricting, the core of a previous district that included a substantial minority concentration. By doing so, Louisiana was able to create a majority-black congressional district that visually resembles previous white-majority districts, while also achieving a regional balance and satisfying considerations of partisan fairness. Thus, rather than rendering Louisiana's plan inherently suspect, the State's reliance on its past district configurations reflects precisely the type of respect for traditional practices that makes strict scrutiny unnecessary under *Miller*.

The district court's dismissal of District 4's resemblance to past districts drawn by the State also reveals a deeper flaw. Once a court discounts a state's individual history and past practices as the touchstone for redistricting, it opens the field to a wholesale substitution of the court's own preferences as the measure of constitutionality. In fact, the appellees now effectively concede that during the most recent trial, their proof was directed toward convincing the district court that its own 1994 court-ordered plan would be the optimal choice for Louisiana, rather than toward proving

the unconstitutionality of Act 1.[11] The district court disliked District 4, as it explained in 1994, because it mixed together areas that grow different agricultural crops ("cotton, soybean, rice, sugar cane, and timber") and because it mixed members of different ethnic and religious groups ("District 4 includes North Louisiana English-Scotch-Irish, mainline Protestants, South Louisiana French-Spanish-German Roman Catholics, traditional rural black Protestants, and Creoles"). *Hays II*, La. J.S. App. 78 (Shaw, D.J., concurring, joined by Weiner, J.). *See also Hays III*, La. J.S. App. 14 (criticizing District 4 because it includes "numerous and diverse cultures, each with its unique identity, history, economy [and] religious preference"). The old 8th District, of course, suffered from many of these same "flaws." In judging Act 1 against the district court's vision of an optimal redistricting plan, and failing to give proper deference to the Legislature's determination that Act 1 comported with Louisiana's customary practices, the district court departed drastically from the core holding of *Miller*.

Finally, the district court erred in holding that Louisiana's desire to comply with the Voting Rights Act was proof of a racial purpose that renders a plan presumptively unconstitutional. J.S. App. at 15-16. As this Court noted in *Johnson v. DeGrandy*, 114 S. Ct. 2647, 2661 (1994), "society's racial and ethnic cleavages sometimes necessitate majority-minority districts to assure equal political and electoral opportunity." Considered compliance with the Voting Rights Act therefore does not weigh in favor of finding that race

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[11] Appellees' Opposition to Pending Applications for Stay Pending Appeal at 4 ("a giant exhibit of the court's 1994 plan stood 'as a brooding omnipresence' during trial and was a focus of testimony from every one of plaintiffs' witnesses"); *id.* at 5 (noting "great prominence given to the court's 1994 plan before, during and after trial").

was the predominant factor behind any districting scheme.[12] The question, under *Miller*, is not whether Louisiana harbored a desire to comply with the Voting Rights Act, but whether, in creating a majority-black district, the Legislature also took reasonable steps to follow its customary redistricting practices and to balance traditional non-racial considerations. Because Louisiana did precisely that in creating Act 1, strict scrutiny is not mandated under *Miller*.

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[12] Despite the district court's attempt to cast Louisiana as merely the instrument of a Justice Department policy of alleged "maximization," La. J.S. App. 16, the facts in Louisiana simply cannot be squeezed into the mold set by Georgia's redistricting history in *Miller v. Johnson*. Louisiana's demographer, Glenn Koepp, confirmed that the Department of Justice played *no* role in his preparation of the legislation that became Act 1. Koepp Dep. 9/15/95 at 134. Indeed, that plan *decreased* the black voting age population in District 4 from 63% to 54%, but nevertheless received preclearance from the Department of Justice. Rather than months of demands and communications from the Justice Department, the district court cites one letter dated April 20, 1994, in which the Justice Department stated that Louisiana could draw a second majority-black congressional district in a manner that is narrowly tailored and that a plan without such a district would likely violate the Voting Rights Act. Pl. Ex. 21 (1995). This letter arrived long *after* the Governor and the legislative leadership had determined that a consensus existed in favor of the plan drawn by Mr. Koepp. Koepp Test., 7/21/94 a.m., Tr. 43-49. Not one Louisiana legislator testified at trial that his vote had been affected by the Justice Department's letter.

II. THE DISTRICT COURT ERRED IN DISMISSING AS INADEQUATE ALL THE COMPELLING INTERESTS SUPPORTING ACT 1 AND IN FINDING THE PLAN NOT NARROWLY TAILORED.

If the record of racial discrimination and racially polarized voting in Louisiana is insufficient to provide a compelling interest supporting the adoption of Act 1, it is doubtful that there is any jurisdiction in the United States where a race-conscious redistricting plan could survive review once a court determines that *Miller* requires strict scrutiny. It is impossible to imagine a stronger record supporting remedial action than the record presented here. Further, in revising its first redistricting plan, Act 42, and adopting Act 1, the State adopted the most narrowly tailored majority-black district that it could devise. The Court should note probable jurisdiction to make clear that *Miller v. Johnson* does not deprive state legislatures of all authority to take voluntary action to comply with the Voting Rights Act and to overcome the exclusion of racial minorities from the mainstream of the state's political life.

A. *Act 1 Furthers Compelling State Interests.*

In Louisiana, whose population is 30% black, no black candidate has been elected to any statewide office in this century, and no black candidate in this century has won election either to Congress or to the Louisiana Legislature from a district where whites comprise a majority of the registered voters. Engstrom Report, State Ex. 13 (1994). Statistical analyses of voting patterns demonstrate indisputably that voting in Louisiana elections, including congressional elections, is severely polarized along racial lines. *Id.* Despite receiving overwhelming support from black voters, black candidates who ran in five congressional elections in the old 8th Congressional District from 1986-

1990 received an average of only 9.3% of the white vote.[13] Further, in recent state legislative races between black candidates and white candidates, black candidates received on average 86.3% of the black vote and a mere 7.2% of the white vote. *Id.* Even appellees' expert witness, Dr. William Allen, concluded that voting is racially polarized in Louisiana. Deposition of Dr. William Barclay Allen (hereafter "Allen Dep.") at 112-114, 144, 149.

Numerous court decisions, most notably a 1983 decision striking down Louisiana's congressional redistricting plan for unlawfully diluting black voting strength, have found that Louisiana has a lengthy history of racial discrimination in voting practices and other walks of life. *Major v. Treen*, 574 F. Supp. 325, 339-40, 352-55 (E.D. La. 1983). Political campaigns in Louisiana, including campaigns for congressional office, often have been characterized by racial appeals.[14] The first-hand experiences of African-American

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[13] State Ex. 15 (1994). The racial breakdown in these election results is as follows:

	% of black voters for black candidate	% of white voters for black candidate
1990 Primary	84.7%	3.2%
1988 Runoff	96.7%	14.9%
1988 Primary	91.0%	3.3%
1986 Runoff	97.0%	21.6%
1986 Primary	68.3%	3.3%

[14] For example, Clyde Holloway, who won election to the 8th Congressional District in 1988, characterized his black opponent in a newspaper interview as follows: "I just believe she was sent in here to run for Congress . . . . I don't know whether it was the Black Congressional Caucus who sent her to run, or the N.A.A.C.P. . . ." (quoted in Report of Dr. Keith Reeves, Def.-Int. Ex. 2 (1995), at 5).

witnesses who testified at trial, as well as those of white advocates for the poor such as Sister Margaret McCaffrey, confirmed the continuing, present-day impact of racial discrimination and political exclusion in Louisiana.[15] The evidence also confirmed that black citizens in Louisiana have had little influence on their elected representatives in majority-white congressional districts, even when the district has had a substantial black minority. State Ex. 13 (1994), Engstrom Report, at 7-8.

In the face of this record, the district court's finding of unconstitutionality contravenes this Court's recent admonition that strict scrutiny is *not* "strict in theory but fatal in fact." *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097, 2117 (1995) (internal quotations and citation omitted). In the end, the district court's *only* articulated reason for denying the presence of a compelling interest supporting Act 1 was its conclusion that District 4 does not sufficiently honor traditional redistricting principles and is noncompact -- the very conclusion that, under *Miller*, *brought about* the

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[15] The applicants offered testimony spanning the last five decades of racial discrimination suffered by African Americans in Louisiana and, in particular, the areas included in the 4th District. *See* Fontenot Test., 10/30/95 p.m., Tr. 185 (describing murder of NAACP official who attempted to register black voters in Opelousas, Louisiana area in 1950's, cross-burnings, and other acts of intimidation); Deposition of Bernadine St. Cyr (hereafter "St. Cyr Dep.") at 10 (recalling "learning how not to drink from a white water fountain, not to even think about going to Poydras Elementary School, [and] going to the back door if I wanted a hamburger at a restaurant" in New Roads, Louisiana in 1960s); McCaffrey Test., 10/31/95 a.m., Tr. 249 (testimony regarding "whites only" park in predominately black neighborhood in Shreveport in 1970s); *id.* at 246 (testimony concerning hostility of local officials towards blacks attempting to register to vote in 1980s); *id.* at 251-52 (describing racially discriminatory zoning proposals put forward in Shreveport in 1994).

application of strict scrutiny in the first place. Thus, under the district court's analysis, a district that is found to depart substantially from traditional redistricting practices is required to undergo strict scrutiny and is also, for that very reason, unable to survive strict scrutiny. To the contrary, Act 1 is justified by Louisiana's compelling interests in complying with the Voting Rights Act and overcoming the State's history of racial discrimination and racially polarized voting.

1. Act 1 Is Supported by Louisiana's Compelling Interest in Complying with the Voting Rights Act.

The district court rejected compliance with Section 2 as a proper remedial basis for District 4 solely because it deemed District 4 insufficiently compact to make a *prima facie* showing under the threshold test set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986). This was error, because a minority group satisfies the *Gingles* threshold standard of numerosity and compactness if a majority-minority district can be drawn that is reasonably comparable in configuration to white-majority districts previously drawn by the state. *Jeffers v. Clinton*, 730 F. Supp. 196, 207 (E.D. Ark. 1990) (three-judge court) (proposed majority-black legislative districts, although somewhat irregular in configuration, satisfied *Gingles* threshold standard because they were "not materially stranger in shape" than other legislatively drawn districts), *aff'd mem.*, 498 U.S. 1019 (1991).[16]

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[16] *See also Cane v. Worcester County*, 35 F.3d 921, 926-27 n.6 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 1097 (1995) (proposed district acceptable under Gingles, despite irregularities in shape, because it is "similar in appearance to one of the former residency districts"); *Clark v. Calhoun County*, 21 F.3d 92, 95-96 & n.2 (5th Cir. 1994) (districts need not conform to absolute standard of compactness to meet burden under *Gingles*); *Marylanders for Fair*

The Louisiana Legislature conscientiously reviewed the state's past congressional district maps and determined that proposed District 4 was reasonably consistent with previous white-majority districts drawn by Louisiana. Contrary to the district court's charge of "post-hoc rationalizations," La. J.S. App. 16, it is undisputed that this review and discussion of Louisiana's past redistricting plans took place *during the legislative session*; indeed, even plaintiffs' witness, Senator Tom Greene, conceded this. Greene Test., 10/30/95, Tr. 50. Of course, the Legislature was also aware of the district court's 1993 decision on Act 42, which found that the "evidence . . . undeniably established" that "a second black majority district could have been drawn that would have done *substantially* less violence to traditional redistricting principles." La. J.S. App. 153 (emphasis added).

A state may take race-conscious action to assure compliance with federal law when "there is sufficient evidence to justify the conclusion that there has been prior discrimination." *Wygant v. Jackson Board of Educ.*, 476 U.S. 267, 277 (1986) (plurality opinion); *id.* at 292-93 (O'Connor, J., concurring in part and concurring in judgment). A court is *not* required to "make an actual finding of prior discrimination based on the [state actor's] proof" before race-conscious action will be upheld. *Wygant*, 476 U.S. at 292 (O'Connor, J., concurring in part and concurring in judgment). Instead, remedial action is permissible so long as the state actor has "a firm basis for concluding that remedial action [is] appropriate." *Id.* at 293. By rejecting the requirement of proving an actual constitutional or statutory violation as a predicate for race-conscious remedial

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Representation v. Schaefer, 849 F. Supp. 1022, 1053 (D. Md. 1994) (three-judge court) (comparing configuration of proposed majority-black district to configuration of majority-white districts in determining that district satisfied *Gingles* standard).

action, this Court has recognized that states are "trapped between the competing hazards of liability to minorities if affirmative action *is not* taken to remedy apparent . . . discrimination and liability to nonminorities if affirmative action *is* taken." *Wygant*, 476 U.S. at 291 (O'Connor, J., concurring in part and concurring in judgment) (emphasis in original); *id.* at 290 (O'Connor, J., concurring in part and concurring in judgment) (recognizing "the value of voluntary efforts to further the objectives of the law") (citation and internal quotations omitted).

With a record leaving no doubt whatsoever concerning the other two *Gingles* threshold factors, and a proposed majority-black district that was "not materially stranger in shape" than districts previously drawn by the State, *see Jeffers v. Clinton*, 730 F. Supp. at 207, the Louisiana Legislature had ample reason to believe that its congressional plan would be vulnerable to a Section 2 vote dilution challenge if it had refused to create a second majority-black district.[17] If a state with Louisiana's record

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[17] Indeed, during the 1980s, congressional and state legislative districting plans that failed to create majority-minority districts were invalidated in several southern states, including Louisiana, for unlawfully diluting minority voting strength in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. *See, e.g., Jordan v. Winter*, 604 F. Supp. 807, 813 (S.D. Miss. 1984) (three-judge court) (holding that majority-black congressional district extending most of length of Mississippi River was necessary because, due to racially polarized voting, blacks had "an unrealistic chance . . . to be elected in majority white voting population districts"), *aff'd mem. sub nom. Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002 (1984); *Major v. Treen*, 574 F. Supp. 325 (E.D. La. 1983) (three-judge court) (holding Louisiana violated Section 2 of Voting Rights Act by refusing to create majority-black congressional district in New Orleans area); *Jeffers v. Clinton* (invalidating Arkansas legislative redistricting plan

of racial discrimination and electoral exclusion cannot draw a majority-black district closely modeled on prior redistricting plans without awaiting actual litigation under the Voting Rights Act and a court's finding of a violation, then no state could dare to pursue "voluntary efforts to further the objectives of the law." *Wygant*, 476 U.S. at 290 (O'Connor, J., concurring in part and concurring in judgment) (citation and internal quotations omitted).

Further, the same record demonstrates a strong basis for Louisiana's belief that Act 1 was justified as a reasonable effort to assure that its redistricting plan was free of any racially discriminatory purpose, in compliance with Section 5 of the Voting Rights Act. *Wygant*, 476 U.S. at 277; *see Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982) (three-judge court) (Section 5 preclearance of congressional redistricting plan denied, despite absence of retrogressive effect, where state had refused to create district in which blacks would constitute a majority), *aff'd mem.*, 459 U.S. 1166 (1983).

2. Act 1 Is Supported by Louisiana's Compelling Interest in Overcoming Past Racial Discrimination and Racially Polarized Voting.

The creation of a second majority-black congressional district was also fully justified as a means to overcome Louisiana's history of racial discrimination in voting practices and the patterns of racially polarized voting in Louisiana that have excluded African-American political representation in majority-white election districts. In a state where severe racially polarized voting prevails, the consequences of drawing only white-majority districts are well understood. In

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under Section 2 because majority-white legislative districts diluted black voting strength).

drawing district lines, a state may reasonably seek to avoid perpetuating past racial discrimination and exclusion of racial minorities from elective office. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989) (opinion of O'Connor, J.) ("evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a [state or] local government's determination that broader remedial relief is justified"); *id.* at 491 (O'Connor, J.).[18] In light of the substantial showing that racial discrimination has seriously impeded the full participation of African Americans in Louisiana's political life and that race continues to permeate the election process to the detriment of African-American voters and candidates, the creation of a second majority-black congressional district in Act 1 was fully justified as a remedial measure.[19]

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[18] *See also Rogers v. Lodge*, 458 U.S. 613, 623-24 (1982) (lack of black electoral success because of racial bloc voting "bear[s] heavily on the issue of purposeful discrimination"); *UJO v. Carey*, 430 U.S. 144, 167 (1977) (a State is not "powerless to minimize the consequences of racial discrimination by voters when it is regularly practiced at the polls") (White, J., joined by Stevens & Rehnquist, JJ.).

[19] The district court clearly erred in asserting that the record lacks "any credible evidence" that the Legislature considered the need to remedy the State's history of racial discrimination when it enacted Act 1. La. J.S. App. 20. There is simply no basis for disputing that the Louisiana Legislature discussed and considered at length the necessity of creating a second majority-black district in 1994 in order to rectify the vestiges of a long history of racial discrimination and to comply with the Voting Rights Act. *See supra* note 3.

B. ***Act 1 is Narrowly Tailored.***

In considering whether Act 1 was narrowly tailored, the district court simply reiterated its objections to the alleged noncompactness of District 4. La. J.S. App. at 21. These objections have already been addressed above, and there is no independent basis for challenging Act 1 as not narrowly tailored. District 4 in Act 1 is directly modeled on past redistricting plans and adheres to customary practices more closely than any other potential majority-black district. The district has only a 54% black voting-age population, does not unnecessarily "pack" black voters, and fully complies with the district court's observation in 1993 that a black voting-age population percentage of 55% would be sufficient to permit black voters to elect a candidate of choice. *Hays I,* La. J.S. App 152.[20] Act 1 serves Louisiana's non-racial redistricting goals and achieves a fair regional and partisan balance.

Moreover, the district court made no finding, and there is no evidence, that white voters in District 4 lack influence on their representative by virtue of the district's configuration, or that there is any racial dimension to the representation that has been afforded to District 4's residents. *See* Report of Dr. David Bositis, Def.-Int. Ex. 1 (1995). Residents of the district, white and black alike, testified that the district has benefited its constituents by

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[20] Acknowledging the force of this evidence, the district court, at the 1994 hearing on Act 1, expressly informed the defendants that it was not necessary for Dr. Engstrom, the Government's expert, to testify regarding racially polarized voting, because the court was already convinced that a district with a 55% black population was necessary to permit black voters an opportunity to elect a candidate of their choice. The district court noted that it would "not entertain any cross-examination to the contrary." Tr. 7/21/94 p.m. at 19 (as Judge Shaw said, "When you strike gold on something, quit digging").

joining persons with common interests, and several plaintiffs admitted that they had no complaints about the representation they have been afforded under Act 1. Gillespie Dep. at 27, 46; Sanders Dep. at 37, 46. *See also* Fontenot Test., 10/30/95 p.m., Tr. 188-89; McCaffrey Test., 10/31/95 a.m., Tr. 247-48; Def.-Int. Ex. 11 (1995), St. Cyr Decl., at 2-3. Indeed, these facts also demonstrate that plaintiffs were unable to demonstrate any injury sufficient to meet their burden of proving standing under *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130 (1992).

III. THE DISTRICT COURT EXCEEDED ITS AUTHORITY IN IMPOSING A PERMANENT REMEDIAL PLAN THAT DEPARTS FROM STATE POLICY AND VIOLATES THE VOTING RIGHTS ACT.

The district court erred in imposing a court-drawn redistricting plan as a permanent remedy without providing the Louisiana Legislature an opportunity to redraw the district. *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978).[21]

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[21] When the State and the defendant-intervenors filed their motions for stay in the district court, the plaintiffs asked the district court to supplement its January 5, 1996, decision by making findings that the State and defendant-intervenors had waived the Legislature's right to redraw its districts, by failing to object to the adoption of a court-ordered remedial plan during the 1996 trial on the constitutionality of Act 1. The plaintiffs provided the district court with an order making such findings, and the court adopted the plaintiffs' order in denying the motions for a stay. Of course, the district court was without jurisdiction to amend its findings because notices of appeal had already been filed. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Further, any "waiver" argument is factually and legally untenable, and cannot be squared with the district court's January 5, 1996 opinion, which addressed the issue on the merits rather than advancing any theory of "waiver." Indeed, the defendants'

Further, even if the court were authorized to impose its own plan without awaiting action by the Legislature or holding a hearing, its plan would still be invalid because it ignores the State's policy choices to a greater extent than is necessary to cure any constitutional defect. *Upham v. Seamon*, 456 U.S. 37, 40-41, 43 (1982).[22]

The district court defended its "remedial" plan based in part on the theory that creating three districts with a 25% or greater black population would provide black voters with "influence" in elections. La. J.S. App. 6 n.17. The proof at trial, however, overwhelmingly refuted any argument that black voters in Louisiana enjoy "influence" over the electoral process in such districts. The old 8th Congressional District was 38% black during the 1980s, yet even plaintiffs' expert, Dr. Weber, described the District 8 representative, Clyde Holloway, as "unresponsive" to black voters. Weber Test., 8/27/92, Tr. 281.

Plaintiff's other expert, Dr. William Allen, conceded that he did not analyze or prove the viability of the "influence" districts, which he nonetheless posited as preferable to the Fourth Congressional District:

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trial evidence directly addressed the many flaws in the district court's 1994 redistricting plan, and a substantial portion of the post-trial brief of the State and defendant-intervenors was devoted to a discussion of those flaws.

[22] The district court's plan is similar to plans the Legislature rejected because they did not achieve a fair regional balance. Accardo Decl., State Ex. 16 (1994), at 12. The court's plan contains no congressional district in the central part of the state centered on the Red River, although Louisiana's redistricting plans included such a district from 1967 through 1990. *See also* Castille Report, U.S. Ex. 3 (1995) at 2. It also combines two incumbents in one district, contrary to state policy.

> Have I attempted to find a Congressional district in which I would maintain that the outcome was determined by the influence vote of black voters? The answer is I have not made the attempt to do that.

Allen Dep. at 185. Dr. Allen also acknowledged that his 25% population figure for black political influence in a congressional district is an "intuitive" figure applicable anywhere, in any congressional district in the country, rather than a figure based on a specific analysis of the circumstances existing in the State of Louisiana. *Id.* at 107, 176-77. Obviously, conjectures about black political influence, supported by no empirical analysis, do not establish that a plan containing districts with a 25% black population affords any influence, much less *optimal* political influence, to black voters in Louisiana. The evidence clearly demonstrated that the district court's plan, which contains no district with a greater than 33% black population outside of District 2, would make it impossible for black voters to elect a candidate of choice to Congress outside of the New Orleans area and would violate the Voting Rights Act. *Jordan v. Winter*, 604 F. Supp. at 811-13.

CONCLUSION

The Court should note probable jurisdiction of this appeal.

Respectfully submitted,

ROBERT B. MCDUFF
771 North Congress Street
Jackson, MS 39202
(601) 969-0802

BARBARA R. ARNWINE
THOMAS J. HENDERSON
*BRENDA WRIGHT
TODD A. COX
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1450 G Street, N.W.
Washington, D.C. 20005
(202) 662-8600

Counsel for Louisiana Legislative Black Caucus

A. LEON HIGGINBOTHAM, JR.
GREGORY A. CLARICK
DEBO ADEGBILE
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

FRANCIS GOWEN, JR.
222 Florida Street
Shreveport, LA 71105
(318) 797-6933

ERNEST JOHNSON
12124 Sullivan Road
Baton Rouge, LA 70807
(504) 261-6469

Counsel for Congressman Cleo Fields

ELAINE R. JONES
Director-Counsel

THEODORE M. SHAW
NORMAN J. CHACHKIN
JACQUELINE A. BERRIEN
VICTOR BOLDEN
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
99 Hudson Street
New York, NY 10013
(212) 219-1900

WILLIAM P. QUIGLEY
Loyola University Law
School
7214 St. Charles Avenue
Box 902
New Orleans, LA 70118
(504) 861-5590

Counsel for Bernadine St. Cyr, Patrick Fontenot, Hazel Freeman, & Ralph Wilson

*Counsel of Record

APPENDIX

[filed February 9, 1996]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RAY HAYS, EDWARD L. ADAMS, SUSAN SHAW SINGLETON, GARY STOKLEY, PATRICIA SLOCUM, RICHARD DAVID, BARBARA DAVID, TERRY GILLESPIE, FLOYD GONZALEZ, RICHARD SANDERS, PARKS SANSING, and BOBBY WILLIAMS,

Plaintiffs,

vs.

STATE OF LOUISIANA et al.,

Defendants,

LOUISIANA LEGISLATIVE BLACK CAUCUS,

Defendant-Intervenor.

Civil Action Nos.
CV92-1522S
CV95-1241

Judge Donald E. Walter
Magistrate Judge Roy S. Payne

NOTICE OF APPEAL

Notice is hereby given that the defendant-intervenor, Louisiana Legislative Black Caucus, hereby appeals to the United States Supreme Court from the judgment of the United States District Court, Western District of Louisiana (three-judge court), entered on January 5, 1996.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Respectfully submitted,

/s/ Brenda Wright
Brenda Wright
Lawyers' Committee for
Civil Rights Under Law
1450 G Street, N.W., Suite
400
Washington, D.C. 20005
(202) 662-8320

Robert B. McDuff
771 North Congress Street
Jackson, MS 39202
(601) 969-0802

Attorneys for Defendant-
Intervenor
Louisiana Legislative Black
Caucus

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 1996 I caused to be served a true and correct copy of the foregoing Notice of Appeal by first-class mail on the following counsel:

Edward Warren
Robert R. Gasaway
Gerald F. Masoudi
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5100
Fax: (202) 879-5200

Jay B. McCallum
Rabun & McCallum
205 E. Jackson Street
Farmerville, LA 71241
(318) 368-3348
Fax: (318) 368-7602

Robert G. Pugh
Pugh, Pugh & Pugh
Suite 2100
Commercial National Tower
333 Texas Street
Shreveport, LA 71101-5302
(318) 227-2270
Fax: (318) 227-2273

Counsel for Plaintiffs

Roy A. Mongrue, Jr.
Assistant Attorney General
Louisiana Department of Justice
301 Main Street, 1 American Place, 6th Floor
Baton Rouge Louisiana 70804
(504) 342-7013
Fax: (504) 342-2090

Henry M. Bernstein
Assistant Attorney General
Louisiana Department of Justice
Litigation Division
330 Marshall Street, Suite 777
Shreveport, Louisiana 71101
(318) 676-5708

Counsel for State of Louisiana, et al.

Richard B. Jerome
Voting Section
Civil Rights Division
Department of Justice

Post Office Box 66128
Washington, D.C. 20035
(202) 514-8696
Fax: (202) 307-3961

William J. Flanagan
First Assistant U.S. Attorney
Western District of Louisiana
330 Fannin Street, Suite 3201
Shreveport, Louisiana 71101

Hon. Drew S. Days
Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

Counsel for the United States

Theodore Shaw
Jacqueline A. Berrien
Victor Bolden
NAACP Legal Defense Fund
99 Hudson Street
New York, New York 10013
(212) 219-1900
Fax: (202) 226-7592

William P. Quigley
Director, Loyola Law Clinic
Loyola University Law School, Room 120
7214 St. Charles Avenue
New Orleans, LA 70118
(504) 861-5590
Fax: (504) 861-5895

Counsel for Defendant-Intervenors Bernadine St. Cyr, et al.

Hon. A. Leon Higginbotham, Jr.
Gregory A. Clarick
Debo P. Adegbile
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000
Fax: (212) 373-2315

Francis M. Gowen, Jr.
222 Florida Street, Suite 200
Shreveport, LA 71105
(318) 797-6933

Ernest Johnson
12124 Sullivan Road
Baton Rouge, LA 70818
(504) 261-6469

Counsel for Defendant-Intervenor
Congressman Cleo Fields

All parties required to be served have been served.

/s/ Brenda Wright
Brenda Wright
Counsel for Louisiana
Legislative Black Caucus

[filed February 14, 1996]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RAY HAYS, et al.,	:	
Plaintiffs,	:	
		Civil Action Nos.
vs.	:	92-1522S, 95-1241
STATE OF LOUISIANA, et al.,	:	Judge Walter Magistrate Payne
Defendants,	:	
vs.	:	
THE HONORABLE CLEO FIELDS, et al.,	:	
Defendant-Intervenors.	:	

NOTICE OF APPEAL

PLEASE TAKE NOTICE that defendant-intervenor the Honorable Cleo Fields hereby appeals to the United States Supreme Court from the judgment of the United States District Court, Western District of Louisiana (three-judge court), entered on January 5, 1996.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Respectfully submitted,

/s/ Gregory A. Clarick
A. Leon Higginbotham, Jr.
Gregory A. Clarick

Debo P. Adegbile
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

-and-

Francis M. Gowen, Jr.
200 Florida Street, Suite 200
Shreveport, LA 71105
(318) 797-6933

Attorneys for Defendant-Intervenor The Honorable Cleo Fields

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be served by first-class mail a true and correct copy of the foregoing Notice of Appeal on the following counsel:

Edward Warren
Robert R. Gasaway
Gerald F. Masoudi
Kirkland & Ellis
655 Fifteenth Street
Washington D.C. 20005
(202) 879-5100

Jay B. McCallum
Rabun & McCallum
205 E. Jackson Street
Farmerville, LA 71241
(318) 368-3348

Robert G. Pugh
Pugh, Pugh & Pugh
333 Texas Street, Suite 2100
Shreveport, LA 71101-5302
(318) 227-2273

Counsel for Plaintiffs

Roy A. Mongrue, Jr.
Assistant Attorney General
Louisiana Department of Justice
301 Main Street
Baton Rouge, LA 70804
(504) 342-7103

Henry M. Bernstein
Assistant Attorney General
Louisiana Department of Justice
330 Marshall Street, Suite 777
Shreveport, LA 71101
(318) 676-5708

Counsel for the State of Louisiana

Richard B. Jerome
Voting Section
Civil Rights Division
Department of Justice
P.O. Box 66128
Washington D.C. 20035
(202) 514-8696

William J. Flanagan
First Asst. U.S. Attorney
Western District of Louisiana
300 Fannin Street, Suite 3201
Shreveport, LA 71101

Hon. Drew S. Days
Soliciter General of the United States
Department of Justice
Washington D.C. 20530

Counsel for the United States

Theodore Shaw
Jacqueline A. Berrien
Victor Bolden
NAACP Legal Defense and Education Fund, Inc.
99 Hudson Street
New York, New York 10013
(212) 226-7592

Counsel to Defendant-Intervenors
Bernadine St. Cyr, et al.

Brenda Wright
Todd Cox
Lawyers Committee for Civil Rights Under Law
1450 "G" Street, Ste. 400
Washington D.C. 10005
(202) 662-8600

Counsel to Defendant-Intervenor
Louisiana Legislative Black Caucus

All parties to be served have been served.

/s/ Gregory A. Clarick
Gregory A. Clarick

Counsel for Defendant-
Interviewer The Honorable
Cleo Fields

Dated: February 13, 1996

[filed February 16, 1996]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RAY HAYS, EDWARD L. ADAMS, SUSAN SHAW SINGLETON, GARY STOKLEY, PATRICIA SLOCUM, RICHARD DAVID, BARBARA DAVID, TERRY GILLESPIE, FLOYD GONZALEZ, RICHARD SANDERS, PARKS SANSING AND BOBBY WILLIAMS,

Plaintiffs,

vs.

STATE OF LOUISIANA, *et al.*,

Defendants,

and

BERNADINE ST. CYR, PATRICK FONTENOT, HAZEL FREEMAN, and RALPH WILSON,

Defendant-Intervenors.

Civil Action Nos.
CV92-1522S
CV95-1241

Judge Donald E. Walter
Magistrate Judge Roy S. Payne

NOTICE OF APPEAL

Notice is hereby given that defendant-intervenors Bernadine St. Cyr, Patrick Fontenot, Hazel Freeman, and

Ralph Wilson, hereby appeal to the United States Supreme Court from the judgment of the United States District Court for the Western District of Louisiana (three-judge court), entered on January 5, 1996.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Respectfully submitted,

/s/ William P. Quigley
William P. Quigley
Louisiana Bar Roll No. 7769
Loyola University School of Law
7214 St. Charles Avenue, Room 120
New Orleans, LA 70118
(504) 861-5590

/s/ Jacqueline A. Berrien
Elaine R. Jones,
Director-Counsel
Theodore M. Shaw
Jacqueline A. Berrien
Victor A. Bolden
NAACP Legal Defense and Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013
(212) 219-1900

Attorneys for Defendant-Intervenors Bernadine St. Cyr, *et al.*

CERTIFICATE OF SERVICE

I hereby certify that this 15th day of February, 1996, I caused to be served a true and correct copy of the foregoing Notice of Appeal by United States mail, first-class, postage prepaid, upon the following counsel:

Edward Warren
Robert R. Gasaway
Gerald F. Masoudi
Rick Richmond
Kirkland & Ellis
655 Fifteenth Street N.W.
Washington, D.C. 20005

Jay B. McCallum
Rabun & McCallum
205 E. Jackson Street
Farmerville, LA 71241

Robert G. Pugh
Pugh, Pugh, & Pugh
Suite 2100
Commercial National Tower
333 Texas Street
Shreveport, LA 71101-5302

Counsel for Plaintiffs

Roy A. Mongrue, Jr.
Assistant Attorney General
Louisiana Department of Justice
301 Main Street
One American Place, 6th Floor
Baton Rouge, LA 70804

Henry M. Bernstein
Assistant Attorney General
Louisiana Department of Justice
Litigation Division
330 Marshall Street, Suite 777
Shreveport, LA 71101

Counsel for State of Louisiana, *et al.*

Richard B. Jerome
Voting Section
Civil Rights Division
United States Department of Justice

Post Office Box 66128
Washington, D.C. 20035

William J. Flanagan
First Assistant U.S. Attorney
Western District of Louisiana
300 Fannin Street, Suite 3201
Shreveport, LA 71101

Hon. Drew S. Days
Solicitor General of the United States
United States Department of Justice
Washington, D.C. 20530

Counsel for the United States

Hon A. Leon Higginbotham, Jr.
Gregory A. Clarick
Debo P. Adegbile
1285 Avenue of the Americas
New York, NY 10019-6064

Francis M. Gowen, Jr.4w
222 Florida Street, Suite 200
Shreveport, LA 71105

Ernest Johnson
12124 Sullivan Road
Baton Rouge, LA 70818

Counsel for Defendant-Intervenor Congressman
Cleo Fields

Brenda Wright
Lawyers' Committee for Civil Rights Under Law
1450 G Street N.W., Suite 400
Washington, D.C. 20005

Robert B. McDuff
771 North Congress Street
Jackson, MS 39202

Counsel for Defendant-Intervenor Louisiana Legislative Black Caucus

All parties required to be served have been served.

/s/ William P. Quigley
WILLIAM P. QUIGLEY